

# TRADE ACT OF 1974

## SUMMARY OF THE PROVISIONS OF H.R. 10710

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PREPARED BY THE STAFFS OF  
COMMITTEE ON FINANCE  
OF THE  
U.S. SENATE  
AND  
COMMITTEE ON WAYS AND MEANS  
OF THE  
U.S. HOUSE OF REPRESENTATIVES



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# TRADE ACT OF 1974

## Summary of the Provisions of H.R. 10710

### TITLE I. NEGOTIATING AUTHORITY

*General Authority.*—The Trade Act of 1974 authorizes the Executive for a period of five years to enter into trade agreements with other countries, for the purpose of harmonizing, reducing, or eliminating tariff and nontariff barriers to, and other distortions of, international trade, subject to certain limitations and conditions. The Act gives strong emphasis to the need for establishing fair and equitable conditions of trade, including reform of the General Agreement on Tariffs and Trade.

*Tariff Authority* (Title I, Ch. 1).—In order to promote the purposes of the Act, detailed in section 2 and in the negotiating objectives set forth in various sections of Title I, the President is authorized to proclaim, in accord with certain limits described below, modifications in rates of duties pursuant to trade agreements whenever he determines that existing duties or other import restrictions of a foreign country or of the United States are unduly burdening and restricting the foreign trade of the United States. The President is authorized to *decrease* duties below the rates in effect on January 1, 1975, within the following limitations:

If existing duties are:

5% ad valorem or less—no limitation;

Over 5% ad valorem—reductions may not exceed 60 percent of existing duties.

The Act establishes certain prenegotiation procedures, including public hearings and advice by the Tariff Commission (renamed the United States International Trade Commission), to assess the probable economic effect of such potential duty reductions on industries producing like or directly competitive articles and on consumers for the purpose of avoiding serious injury to the U.S. economy. In addition, private advisory groups are established to provide the negotiators with policy and technical advice prior to, and throughout, the negotiations.

Negotiated duty reductions which exceed ten percent of the prior rate would be staged over a period of time at an annual rate not exceeding the greater at 3% ad valorem or one-tenth of the total reduction.

The President is authorized, as part of negotiated trade agreements, to *increase* (or impose) rates of duties not to exceed 50% above the column 2 rate existing on January 1, 1975, or 20% ad valorem above the rate existing on January 1, 1975, whichever is higher.

*Nontariff Barriers* (Title I, Ch. 1).—The President is authorized to enter into trade agreements to harmonize, reduce, or eliminate nontariff barriers and distortions, including subsidies, to international trade in goods and services which he determines are unduly burdening or restricting the foreign commerce of the United States, adversely affecting the U.S. economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations.

At least 90 days before entering into such a trade agreement under section 102 of the bill, the President is required to notify the House and Senate and publish notice of his intention in the Federal Register. The President or his representative is also to be required to consult in advance with appropriate committees of the Congress concerning the agreements and their "packaging" for submission to Congress. All agreements involving nontariff barriers and distortions, together with a draft of any necessary implementing legislation and a statement of any administrative action proposed to implement the agreement, must be submitted to the Congress for consideration. Thus the Congress and the American people will have an understanding of the ramifications of such trade agreements before they could become effective.

In order to assure that the Congress will consider such legislation, while at the same time preserving the constitutional powers vested in the Congress, the Act establishes special procedures for considering implementing legislation. If, forty-five legislative days after implementing legislation has been introduced, the committee (or committees) to which the matter had been referred has not already reported the legislation, the committee (or committees) will be discharged from further consideration. A vote on final passage of the implementing legislation will be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee or committees to which it was referred, or after they have been discharged from further consideration of the bill or resolution. No amendments will be allowed. In the case of revenue bills, which must originate in the House of Representatives, each House will be given up to 60 days in which to consider agreements (for a total of up to 120 legislative days). Under the Act both Houses must approve such implementing legislation, by majority vote of the members present and voting, before agreements negotiated under section 102 of Title I can enter into force for the United States.

*Negotiating Objectives* (Title I, Ch. 1).—The overall negotiating objective of the United States under the bill is to obtain more open and equitable market access for U.S. exports of goods and services and to harmonize, reduce and eliminate barriers to international trade.

The Act also makes it a principal U.S. negotiating objective to obtain, to the maximum extent feasible, with respect to appropriate sectors of manufacturing and with respect to the agricultural sector, competitive opportunities for United States exports to developed countries equivalent to competitive opportunities afforded similar products in United States markets. U.S. negotiators are directed to obtain, to the maximum extent feasible, equivalent competitive opportunities within sectors (e.g., bargaining U.S. import concessions

within one sector of manufacturing for foreign concessions resulting in equivalent market opportunities for U.S. exporters in that sector). The private advisory bodies will advise the negotiators on how the goal can best be accomplished. The Special Representative for Trade Negotiations is required to account to the Congress and the public on how successful he was in achieving this negotiating objective. Private sector advisory committees, established by the Act will issue formal reports at the conclusion of agreements affecting their sectors, evaluating the equity and mutuality of the agreements within their sectors. The Congress therefore will be better able to judge whether this negotiation achieved mutual benefits for the commerce of the United States.

A further negotiating objective of the United States in the nontariff barrier negotiations is to obtain international safeguard procedures designed to permit the use of temporary measures to ease the adjustment to change brought about by the effect of such negotiations upon the growth of international trade.

The Act establishes as a principal negotiating objective, the entering into of trade agreements with any foreign country or group of countries which supply the United States with articles of commerce which are essential for U.S. economic requirements, and for which the United States does not have, or cannot easily develop, the necessary productive capacity to supply its own requirements.

The Act authorizes and encourages the President to enter into bilateral trade agreements where such agreements would better serve U.S. economic interests than agreements undertaken on a multilateral basis. In addition, the Act provides that the President may enter into a trade agreement with Canada aimed at eliminating or moving to eliminate trade barriers between the two countries on a reciprocal basis.

*Reform of the General Agreement on Tariffs and Trade (GATT)* (Title I, Ch. 2).—The Act directs the President to seek reform of the GATT (or through negotiation of other agreements) to establish principles promoting the development of an open, nondiscriminatory and fair world economic system. Such principles include: (1) revision of decision-making procedures of the GATT, (2) expansion of the safeguard provision (Article XIX) to cover all forms of import restraints countries use in response to injurious competition, (3) extension of the Agreement to matters not presently covered to move toward fair trade practices, (4) the adoption of international fair labor standards, (5) revision of the Agreement with respect to the treatment of border adjustments for internal taxes, (6) revision of the Agreement to recognize import surcharges as the preferred response to balance of payments deficits, (7) strengthening of the Agreement to assure access to supplies including rules and procedures governing imposition of export controls, the denial of fair and equitable access to such supplies, and effective consultation procedures, (8) the establishment of multilateral procedures and sanctions with respect to such countries which deny fair and equitable access to supplies of food, raw materials, semi-manufactured and manufactured commodities, and thereby injure the international community, (9) establishment of international procedures for regular consultation among countries regarding international trade and the resolution of commercial disputes, (10) any revisions necessary to

apply principles of reciprocity and nondiscrimination including elimination of special preferences and reverse preferences, (11) any revisions necessary to define acceptable forms of subsidy to industries producing products for export and to attract foreign investment, and (12) negotiations to establish within the GATT an international agreement on certain articles (including footwear).

The Act requires that any trade agreement entered into by the President which would change domestic Federal law (or materially change administrative regulations) will not take effect unless implementing legislation has been approved by both Houses of Congress.

*Balance of Payments Authority* (Title I, Section 122).—The Act directs the President to proclaim, for a period of up to 150 days, such import surcharges (up to 15 percent ad valorem) or, under certain circumstances, import quotas, or a combination of the two, as may be necessary to deal with large and serious U.S. balance of payments deficits, to prevent an imminent and significant depreciation of the dollar, or to cooperate with other countries in correcting international balance of payments disequilibria. If the President fails to take action to protect the United States from continuing, large and serious balance of payments deficits, he is required to consult with the members of the Committee on Finance and the Committee on Ways and Means.

If the President determines that the United States has experienced large, persistent, trade surpluses, which require an increase in U.S. imports, he is authorized to proclaim for a period of up to 150 days, a temporary reduction in the rate of duty of not more than 5 percent ad valorem on any article or an increase in quotas or a temporary suspension of other import restrictions.

Import restrictions are to be applied on a nondiscriminatory basis, unless the President determines that circumstances warrant restrictions on imports from individual countries. Such circumstances could include situations in which the large and serious U.S. balance-of-payments deficits are substantially the result of one or several countries having large surpluses and failing to take voluntary and effective action to reduce those surpluses. (Whenever U.S. trade performance is measured to reach determinations under authorities granted by the Act, the Executive is to assay and publish the U.S. balance of trade on a c.i.f. basis. The c.i.f. basis, with respect to imports, includes the cost of insurance, and freight, and excludes soft currency sales, long-term foreign-aid-financed shipments, and outright grants from export totals.)

*Compensation Authority*.—The Act provides permanent authority following expiration of the basic tariff reduction authority for the President to compensate foreign countries for increasing trade restrictions as import relief through new trade agreement concessions. Tariff reductions cannot exceed 30 percent. The President has discretionary authority not to grant compensation to a foreign country which has violated trade concessions to the United States without paying adequate compensation.

*Renegotiation Authority*.—The Act provides the President limited residual authority to negotiate duties during the two years following the expiration of the tariff authority. Tariffs cannot be reduced by more than 20 percent or reduced or increased to more than the maximum level authorized under the basic tariff authority.



The Act reaffirms the Congressional directive of most-favored-nation (nondiscriminatory) treatment by requiring that any duty or other import restriction or duty-free treatment proclaimed under the negotiating authority of Title I shall apply to products of all foreign countries (unless otherwise provided as in the case of Title IV). However, in the interest of assuring that no industrialized country be given a free ride, the Act includes a requirement that the President determine, at the conclusion of the negotiations, whether any major industrialized country has failed to make concessions which would provide for the commerce of the United States substantially equivalent competitive opportunities provided by the United States under the authority of the Act to such country. The President shall report to Congress whether any major industrialized country has failed to provide substantially equivalent market opportunities and recommend to the Congress that such country should be denied the benefits of concessions made under the Act, and, if necessary to restore relatively equivalent competitive opportunities, the President shall recommend appropriate legislation. The Congress may deny the application of U.S. concessions to countries which have failed to provide substantially equivalent market opportunities for U.S. commerce.

*Hearings and Advice Concerning Negotiations* (Title I, Ch. 3).—The Act contains a number of provisions intended to increase the participation of the public, the Congress, and various governmental agencies in the trade agreements program. The role of the Tariff Commission (renamed the International Trade Commission) as a fact-finder and advisor is expanded and the Commission is made more independent of the Executive. In addition, the bill establishes various private advisory groups representing labor, industry, agriculture, consumers service industries, retailers and the general public to provide policy and technical advice during the negotiations, and in certain instances, to issue official reports at the conclusion of negotiations within their respective sectors.

*Office of Special Representative for Trade Negotiations* (STR) (Title I, Ch. 4).—The Act establishes within the Executive Office of the President, the Office of the Special Representative for Trade Negotiations. The Special Trade Representative under the Act will report directly, as well as be responsible, to the President and to the Congress for the administration of the trade agreements program. The Special Trade Representative is elevated to Executive Level I (Cabinet rank) and his two deputies are given Executive Level III's.

*Congressional Oversight and Liaison* (Title I, Ch.'s 5 and 6).—The capability of the Congress to monitor and shape U.S. trade policy during the negotiations is also strengthened. In addition to the procedures established for the positive approval of nontariff barrier agreements, the Act provides for Congressional overrides of certain types of Executive actions. Examples of Executive actions which could be overridden by a majority vote of the House and Senate include:

1. Decisions by the President not to provide import relief or import relief other than that recommended by the International Trade Commission,
2. Decisions by the President to retaliate (against foreign countries discriminating against U.S. commerce) on a most-favored-nation basis rather than against the specific offending country.

In addition to the implementing bills proposing changes in U.S. law as a result of nontariff barrier agreements under Title I, both Houses must approve by concurrent resolution the extension of trade benefits under future trade agreements negotiated by the Executive with nonmarket countries and either House may veto the extension of benefits to nonmarket countries which have entered into, prior to the enactment of this bill, trade agreements with the Executive. To assure greater Congressional oversight of these negotiations, five members of the House and five members of the Senate would be designated official advisors to the U.S. delegation.

*International Trade Commission* (Title I, Ch. 7).—The Act contains several provisions to foster the independence of and to strengthen the Tariff Commission. Because tariffs are no longer the major impediments to trade, the Commission is renamed the United States International Trade Commission. To enhance the commissioners' independence from Executive domination, commissioners' terms are to be gradually lengthened to 9 years. Present commissioners may be reappointed to one 9-year term; thereafter commissioners are limited to one term. The chairmanship and vice-chairmanship would be rotated among the commissioners every 18 months. The Commission is empowered to enforce its own subpoenas and to represent itself in court proceedings relative to its own statutory function.

## TITLE II. RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

*Industry Import Relief* (Title II, Ch. 1).—The Trade Act of 1974 makes major changes in the import relief measures provided in the Trade Expansion Act of 1962 for industries. Under prior law, increased imports must have been *in major part* the result of trade agreement concessions before import relief measures were undertaken; under the Trade Act, no link to concessions is required. Furthermore, under the Act increased imports must only be *a substantial cause* of serious injury or the threat thereof (“substantial cause” is defined to mean a cause which is “important” and not less than any other cause) and no longer the *major factor* (generally assumed to mean a cause greater than all other causes combined) of such injury, as required by prior law. If the International Trade Commission finds that imports are a substantial cause of serious injury (or threat thereof) to an industry, the President is required, with certain exceptions to provide some form of import relief (duty increases, tariff-rate quotas, quantitative restrictions, orderly marketing agreements, or, under appropriate circumstances and upon a recommendation of the Commission, adjustment assistance). Under the Trade Act, the President can also choose not to provide import relief when he determines that it would not be in the national economic interest. However, if the Congress prefers the form of import relief proposed by the Commission to the relief provided by the Executive, or when the President determines not to provide import relief, a majority of those present and voting of both Houses can pass a resolution requiring the President to implement the relief recommended by the Commission.

*Worker Adjustment Assistance* (Title II, Ch. 2).—The Trade Act makes major modifications in the prior program of trade adjustment assistance for workers displaced by increased imports. These changes will make adjustment assistance more accessible to these workers. In addition to easing the eligibility tests, the level of benefits are increased and there are additional measures aimed at helping adversely affected workers to find new employment, including job search, training and relocation allowances.

Under the worker adjustment assistance provisions, workers in a firm qualify for trade adjustment benefits if the Secretary of Labor, within sixty days after the filing of a petition, finds that an absolute or relative increase in imports *contributed importantly* to the workers’ unemployment, and to a decrease in sales or production of the firm from which they have become unemployed.

Workers certified as eligible for trade adjustment assistance are to receive benefits equal to 70 percent of each worker’s average weekly earnings prior to the time he or she became unemployed for a period of up to 52 weeks (the duration of benefit eligibility could be extended for older workers and workers in training). This benefit level, however, cannot exceed 100 percent of the national average weekly wage in manufacturing which is currently about \$180.

Under the Act, States will be responsible for meeting the basic costs of benefits for which workers would be eligible under existing State unemployment insurance programs. Supplemental benefits provided over and above that level will be paid for by the Federal Government.

The program will cost the Federal Government an estimated \$335 million in its first year and will expire September 30, 1982.

*Firm Adjustment Assistance* (Title II, Ch. 3).—Firms adversely affected by imports, which are found eligible for assistance, will be entitled to technical assistance as well as financial assistance in the form of loans and loan guarantees, as under present law. The Secretary of Commerce is required to reach his decision on a firm's adjustment assistance proposal no later than sixty days after receiving the firm's application. The injury test for firms is virtually identical to that required of workers. The program of adjustment assistance for firms, like the worker adjustment assistance program, would expire September 30, 1982.

*Community Adjustment Assistance* (Title II, Ch. 4).—The Act establishes a new program of community adjustment assistance intended to help restore the economic viability of areas adversely affected by increased imports. The program is intended to create new job opportunities in trade impacted areas. Under the program, local governmental units will petition the Secretary of Commerce for a certification of eligibility to apply for assistance. Communities will be certified as eligible to apply for adjustment assistance if the Secretary determines that a significant number or proportion of the workers employed within the "trade impacted area" defined by the Secretary of Commerce have been or are threatened to become totally or partially separated, that sales or production of a firm or firms within the area have decreased absolutely, and that increased imports or the transfer of productive facilities to a foreign nation have contributed importantly to the unemployment or decline in sales or production. Eligible communities could receive a variety of developmental assistance including technical assistance and direct grants for the acquisition and development of land and improvements of public works and public services.

The bill contains several provisions designed to attract new investment to trade impacted areas. The Secretary of Commerce is authorized to make loans and loan guarantees to qualified applicants to acquire, construct, or modernize plant facilities or for such other purposes as the Secretary determines are likely to attract new investment and to create new, long-term employment opportunities within the area. The Secretary is authorized to make loan guarantees available to qualified applicants under a joint security agreement with the Governor and/or local official in whose jurisdiction the trade impacted area lies (provided the locality's revenue sharing entitlement in previous years has exceeded its share of the guarantee). The Governor and/or local official may sign a commitment pledging such a portion of the state and locality's next general revenue sharing entitlement as is necessary to cover up to 50 percent of the deficiency. In the event of a default on a loan guarantee, the Secretary of Commerce will certify the circumstances and amount of the deficiency to the Secretary of Treasury; the Secretary of Treasury will reduce the State and/or locality's entitlement for the subsequent revenue sharing allotments by 50 percent of the deficiency. The remaining half will be sat-

ified out of the general revenues of the Treasury. States may enact alternative loan guarantee plans to satisfy any potential liability upon the approval of the Secretary of Commerce.

In order to encourage an increase in the participation of labor in the equity ownership of a corporation, the Act directs that corporations applying for loan guarantees be given a preference if they undertake to establish a trust which is part of a qualified employee stock ownership plan. Under the proposal, a corporation whose loan is guaranteed may establish an employee stock ownership plan involving stock valued at least one-quarter the amount of the loan guarantee.

One hundred million dollars would be authorized for loans and direct grants during the first year; up to \$1 billion in outstanding loans could be guaranteed at any one time. The community adjustment assistance program expires September 30, 1982.

*Trade Statistics Monitoring System.*—In order to facilitate the operation of the community assistance program, the Act establishes a statistical monitoring system to correlate increases in imports with employment levels by economic sectors. The Act directs the Bureau of Census and the Bureau of Labor Statistics to develop a program to monitor import trends and to signal abrupt increases in imports which are likely to adversely affect employment in particular sectors of the economy which may be concentrated in particular geographic regions. Such data would be published periodically and made available on a timely basis to the Adjustment Assistance Coordinating Committee. The information will serve as an early warning of serious dislocation from abrupt increases in imports.

*GAO Evaluation of Trade Adjustment Assistance.*—In order for the Congress to better fulfill its oversight responsibilities over the adjustment assistance programs for workers, firms, and communities, the Act terminates these provisions in seven years and requires a GAO evaluation study to be completed before the end of that period.

*Relocation of Firms Outside the United States.*—Firms which make the decision to relocate in a foreign nation ought to assume certain responsibilities toward the employees displaced by foreign production. Accordingly under the Act, firms which decide to close their productive facilities in a community and establish a facility producing like or similar articles in a foreign nation should:

1. Provide advance notice of at least 60 days to employees likely to be laid off, and
2. Provide the same advance notice to the Secretary of Labor and the Secretary of Commerce explaining the reason for the relocation.

Moreover, it is the sense of the Congress that such firms should:

3. Apply for and utilize all economic adjustment assistance to which they are entitled;
4. Offer alternative employment opportunities to dislocated workers in other facilities within the U.S. whenever they exist; and
5. Assist in the relocation of these workers to other communities in which employment opportunities exist.



### TITLE III. RELIEF FROM UNFAIR TRADE PRACTICES

*Generally.*—The 1974 Trade Act substantially revises Executive authority under prior law to respond to foreign unfair trade practices, including authorities under the Trade Expansion Act of 1962, the Antidumping Act of 1921, and the Tariff Act of 1930. The intention generally has been to assure a swift and certain response to foreign import restrictions, export subsidies, and price discrimination (dumping) and other unfair foreign trade practices, through the revision of U.S. laws.

*A. Retaliation Against Foreign Import Restrictions; Export Subsidies and Withholding of Supplies* (Title III, Sections 301–302).—Under section 301 of the Act, the President is authorized to retaliate against foreign countries which impose unjustifiable or unreasonable restrictions against U.S. commerce. The Act also provides the President with explicit authority to retaliate against countries which maintain such restrictions against U.S. *services* as well as U.S. trade in goods. Discrimination against U.S. services includes, but is not limited to, discrimination against U.S. shipping, aviation, and insurance industries. In addition, retaliatory actions may be taken with respect to foreign services as well as foreign merchandise.

In order to make section 301 a more effective tool against foreign practices and policies adversely affecting the U.S. economy, the Trade Act provides a complaint procedure whereby interested parties can petition the Special Representative for Trade Negotiations to conduct a review, with public hearings of such alleged practices and policies. The Special Representative is required to report to Congress on a semiannual basis concerning the status of the reviews undertaken pursuant to this section.

The Act requires that actions taken by the President under section 301 should generally be on a selective basis, that is, only against those countries found to discriminate against U.S. commerce. The President has the discretion to act on a selective or a most-favored-nation (that is across-the-board) basis when retaliating against unjustifiable or unreasonable import restrictions. However, Congress can overrule any Presidential determination to act against “innocent” countries and require, by concurrent resolution, that the President act only against the offending country (or countries) maintaining unreasonable or unjustifiable restrictions against U.S. commerce or withholding supplies.

The authority to retaliate in situations in which a foreign nation withholds supplies of needed commodities without justification complements other features of the Act directing the President to negotiate new, enforceable rules with respect to export restraints. In an international economic period characterized by widespread shortages and inflation, this is a vital aspect of the trade negotiations.

*B. Antidumping Duties* (Title III, Section 321).—The Act makes several significant changes in the antidumping statute to improve the U.S. response to foreign price discrimination practices.

1. *Equal hearing rights*.—The 1974 Trade Act provides that U.S. manufacturers, producers, or wholesalers of the merchandise, as well as foreign manufacturers, exporters and domestic importers, have an equal and automatic right to appear at hearings before the Secretary of the Treasury or the Commission in connection with less-than-fair-value or injury determinations made under the Antidumping Act.

2. *Preliminary injury determination*.—The Act authorizes the Secretary of the Treasury, when he concludes that there is substantial doubt that a U.S. industry is being injured by “dumped” imports, to refer the initial dumping complaint to the Commission for its consideration. If the Commission determines that there is no reasonable indication of injury, it may notify the Secretary within 30 days and the dumping investigation would terminate.

3. *Time limits*.—The Act requires that the initial determination whether there is reason to believe that there are less-than-fair-value sales be made within 6 months from the date on which the antidumping proceeding notice is published. (This period for initial determination may be extended to 9 months in complicated cases.) Under the Act, the antidumping proceeding notice must be published within 30 days of the receipt of information alleging dumping by the Secretary of the Treasury.

4. *Multinational corporation dumping*.—The Act requires the Secretary of the Treasury to impose dumping duties when a multinational corporation operating in several foreign countries supports low-priced exports to the United States through high-priced sales by other subsidiaries located in other foreign countries. Specifically, when the Secretary determines that:

(1) merchandise exported to the U.S. is produced in facilities owned or controlled by a person, firm, or corporation which also owns or controls similar facilities in other countries;

(2) there are little or no sales in the home market of the exporting country; and

(3) sales of like or similar merchandise made in other countries are at prices substantially higher than the prices charged for goods produced in the exporting country and such price differentials are not justified by cost differences,

the Secretary shall determine the foreign market value by looking at the higher prices (adjusted for differences in cost of production) at which similar merchandise is sold by other foreign facilities located outside the exporting country. The dumping duty will then be assessed in an amount equal to the difference between the purchase price in the U.S. (or the exporter's sale price) and the higher foreign market value of goods sold by the third country subsidiaries rather than the lower foreign market value of the goods actually exported to the United States.

5. *Judicial review*.—The Act explicitly authorizes judicial review for U.S. producers and manufacturers in the U.S. customs courts of negative antidumping decisions made by the Secretary of the Treasury. Importers and foreign producers have already been entitled to judicial review under prior law.



C. *Countervailing Duties* (Title III, Section 331). Section 303 of the Tariff Act of 1930 requires the Secretary of the Treasury to impose countervailing duties upon imported merchandise if its manufacture, production, or export has benefited directly or indirectly from a bounty or grant (subsidy). Section 331 of the bill makes major procedural as well as substantive changes in the countervailing duty law to improve the operation of the statute:

1. *Beginning of time period for investigation.*—Under the Act, the time period for countervailing duty investigations begins to run from the date a petition is presented to the Secretary of the Treasury. Notice of the receipt of such petition is to be published in the Federal Register.

2. *Time limits; conditional discretion and Congressional override.*—The Act provides that:

(a) The Secretary of the Treasury has six months from the date of the petition in which to make a preliminary determination as to the existence of a bounty or grant.

(b) If the initial determination indicates the likely existence of a bounty or grant, the Secretary of the Treasury has an additional six months to negotiate with the particular foreign country(ies) in an attempt to obtain the elimination of the bounty or grant.

(c) If the bounty or grant, or any portion thereof, remains in effect, the Secretary of the Treasury is required to issue a final countervailing duty order following the end of the second six-month period (total time period one year from date of petition). However, he may suspend the application of the order if he determines that:

(i) adequate steps have been taken substantially to reduce or eliminate the adverse effect of the bounty or grant;

(ii) there is a reasonable prospect that successful trade agreements will be entered into, under section 102, with foreign countries providing for the reduction or elimination of nontariff barriers; and

(iii) the imposition of countervailing duties would be likely to seriously jeopardize the satisfactory completion of such negotiations.

The suspension must be ended if any of the conditions described above do not continue, and may otherwise be ended at any time. The authority of the Secretary to suspend countervailing duties expires after four years from date of enactment of the bill. The initial determination, the results of any negotiation, and any final determination (including suspension of countervailing duties) must be made public. The waiver does not apply in the case of subsidized nonrubber footwear unless the imposition of countervailing duties would jeopardize multilateral negotiations on a nonrubber footwear agreement.

(d) Whenever the Secretary decides to suspend the imposition of countervailing duties, he must immediately report his determination to Congress. At any time thereafter, either House of Congress can, under the veto procedure, vote by simple majority to override the Secretary's decision and to require the Secretary to impose immediately the countervailing duties.

(e) Countervailing duty orders by the Secretary of the Treasury go into effect immediately upon publication of the order in the Federal Register (no later than one year after the date a petition is submitted to the Secretary). In the case of a Congressional override, notice of countervailing duties is published and such duties go into effect the day after the date of the adoption of the resolution of disapproval.

(f) Determinations by the Secretary of the Treasury that no bounty or grant exists are subject to judicial review. Under prior law, only positive determinations were subject to judicial review.

D. *Unfair Import Practices* (Title III, Section 341).—Section 337 of the Tariff Act of 1930 authorizes the Tariff Commission to investigate alleged unfair methods of competition in the importation of articles or in the sale of imported articles in the United States. It has been most often applied in the past to articles entering the United States in violation of claims under U.S. patents. Under prior law, if the Commission found the effect of such methods was to destroy or substantially injure an industry efficiently and economically operated in the United States, to prevent the establishment of an industry or to restrain or monopolize trade or commerce in the United States, the articles involved *could* have been excluded from entry into the United States by the President.

As amended by the 1974 Trade Act, the Commission is now authorized to order the exclusion of articles in all cases under section 337, patent and nonpatent. The Commission is also authorized to issue cease and desist orders rather than exclusion orders whenever it deems such action a more suitable remedy. If the cease and desist order is not adhered to, the exclusion order would go into effect. More specifically, the Act provides the following:

1. *Time limits for action*.—International Trade (Tariff) Commission investigations of unfair trade practices under section 337 must be completed within a one-year period. The Commission could have an additional 6 months in complicated cases, provided that it publish the reasons for the extension. Any period during which the Commission's investigation is suspended because of proceedings in a Federal court or agency involving the same subject matter will be excluded from the time periods.

2. *Investigations by the Commission*.—During its investigations under section 337, the Commission is directed to consult with the Departments of Justice, Health, Education, and Welfare, the Federal Trade Commission, and other government agencies when appropriate. In making its determinations as to whether or not to act, the Commission is required to take into consideration, in addition to the criteria formerly set out in section 337(a), the effect which such action would have on the general health and welfare, on competitive conditions in the economy, on the production of like or competitive merchandise in the United States, and on consumers. These considerations may be overriding.

3. *Presidential intervention*.—Following the issuance of exclusion or cease and desist orders by the Commission, the President has 60 days in which to intervene and override the Commission's decision where he determines it necessary because of overriding policy reasons.

4. *Defenses, Government exceptions.*—All legal and equitable defenses may be presented in all cases under section 337. The remedies in section 337 patent cases do not apply to imports by the U.S. Government. Such actions against the Government would be brought in the U.S. Court of Claims.

5. *Bonding procedure.*—Temporary exclusion orders may be issued in certain circumstances under section 337; in such cases (and also during the 60-day period for Presidential intervention), provision is made for entry under bond. The Act requires the Secretary of the Treasury, prior to levying a bond, to acquire the advice of the Commission concerning the amount of the bond in both patent and non-patent cases.

6. *Transitional measures.*—The Commission is required to complete within one year its investigations on all section 337 cases pending on the date of enactment of the Trade Act.

7. *Res judicata, collateral estoppel.*—Decisions by the U.S. Court of Customs and Patent Appeals reviewing Commission decisions under section 337 do not serve as *res judicata* or *collateral estoppel* in matters where U.S. District Courts have original jurisdiction.



#### **TITLE IV. TRADE RELATIONS WITH COUNTRIES WHOSE PRODUCTS ARE NOT CURRENTLY RECEIVING MOST-FAVORED-NATION (NON-DISCRIMINATORY) TREATMENT IN THE U.S. MARKET**

Title IV of the Act authorizes the President to extend, under certain circumstances, most-favored-nation (nondiscriminatory) trade concessions to countries whose products do not currently receive such treatment. The only countries not now receiving nondiscriminatory treatment in the U.S. market are the communist nations (with the exception of Poland and Yugoslavia, whose products do receive such treatment). Under Section 231(a) of the Trade Expansion Act of 1962, the President is precluded from extending nondiscriminatory or column 1 treatment to countries not currently receiving such treatment.

Title IV imposes several conditions on the delegation of authority to the President to extend nondiscriminatory treatment. Section 402 provides that no country would be eligible to receive nondiscriminatory tariff treatment or U.S. Government credits, credit guarantees or investment guarantees if the President determines such country:

- (1) denies its citizens the right or opportunity to emigrate;
- (2) imposes more than a nominal tax on emigration or on the visas on other documents required for emigration, for any purpose or cause whatsoever; or
- (3) imposes more than a nominal tax, levy, fine, fee or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice.

A country would become eligible for nondiscriminatory treatment under this title only after the President determined that it was not violating any of the above conditions and so reported his determination to the Congress. Any country which was found to be denying its citizens the right to emigrate would also be prohibited from receiving any U.S. Government credits, credit guarantees, or investment guarantees, and from entering into a bilateral trade agreement under section 403. Following receipt of the initial report by the President to the Congress under section 402, either House can veto the extension of Government credits and guarantees to the country concerned by a majority vote within 90 days.

Under the Act, only countries entering into bilateral agreements with the United States could receive nondiscriminatory treatment. Nondiscriminatory treatment would remain in effect only so long as a trade agreement remained in force between the United States and the country concerned. The President, however, has the authority to suspend or withdraw nondiscriminatory treatment to any country at any time.

Under section 403, nondiscriminatory treatment for any country which has entered into an agreement with the United States for the settlement of lend-lease debts would be limited to periods in which the country was not in arrears on its obligations under the agreement.

(The Soviet-American lend-lease settlement agreement, on the other hand, conditions the Soviet Union's fourth and all subsequent lend-lease payments upon the extension of nondiscriminatory treatment by the United States.)

All future bilateral agreements entered into between the United States and a nonmarket economy nation are subject to approval by both Houses of Congress before the President could proclaim trade concessions. The one-House veto provision would apply to the extension of nondiscriminatory treatment under the U.S.-Soviet commercial agreement. Furthermore, following receipt of the annual December report of the President under sections 402 and 403, either House can, within 90 days, veto the continued extension of MFN treatment or granting of government credits or guarantees to any country receiving nondiscriminatory treatment under Title IV. Trade benefits under any bilateral agreement would be limited to an initial period not exceeding three years. Thereafter, an agreement could be renewed for additional periods, each of not more than three years, providing that a satisfactory balance of concessions in trade and services had been maintained and that U.S. reductions in trade barriers had been reciprocated by the other party. Services include transportation and insurance and other commercial services associated with international trade.

Bilateral agreements are required to include provisions for: (1) suspension or termination for reasons of national security, (2) safeguards against disruption of domestic markets, (3) protection of patents if the other party is not a member of the Paris Convention for the Protection of Industrial Property, (4) settlement of commercial disputes, and (5) consultations for reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party. Bilateral agreements must also include arrangements for the protection of industrial rights such as copyrights, promotion of trade, and other commercial arrangements promoting the purposes of the bill.

*Freedom of Emigration Waiver.*—The Act contains a provision allowing the President to waive the freedom-of-emigration requirements for any country, if he reports to Congress that (1) he has determined that such a waiver would promote the objectives of freer emigration, and (2) he has received assurances that the emigration practices of such country will lead substantially to free emigration. The waiver authority extends for an 18-month period after the date of enactment of the Act, and may be renewed for one year periods thereafter subject to congressional review. The President may terminate nondiscriminatory treatment at any time.

*Market disruption.*—The Act contains significant improvements in the provisions to avert disruption of U.S. markets by imports from nonmarket economies:

1. *Safeguard provisions in commercial agreements.*—Under the Act, consultation procedures and rules would be written into all commercial agreements with nonmarket countries similar to Article 3 and Annex I of the U.S.-U.S.S.R. Trade Agreement.

2. *Petition for consultation.*—The Act would permit trade associations, firms, and unions to petition the President to initiate consultation procedures between the U.S. and the particular non-

market economy upon a showing of likelihood of market disruption as a result of imports entering under a commercial agreement negotiated pursuant to Title IV.

3. *Relief from market disruption.*—The Act provides that market disruption may be found to exist upon a determination by the International Trade (Tariff) Commission that imports of an article like or directly competitive with an article produced in a domestic industry from any communist country are increasing rapidly so as to be a significant cause of material injury, or the threat thereof, to the domestic industry. The Commission would have three months to conclude its investigation under section 406. These provisions apply to all communist countries.

4. *Expedited relief.*—The Act authorizes the President to take immediate action whenever he determines that a condition exists requiring emergency treatment. This “fast track” authority would apply to both the consultative procedures and the market disruption relief provisions in section 406.

5. *Selective application.*—The Act limits the President’s authority to impose import restrictions only to the products from nonmarket countries which are causing the market disruption.

*Claims Settlement with Czechoslovakia.*—Under the Act, the President is directed to renegotiate the agreement with Czechoslovakia on the settlement of U.S. claims. There must be a full and fair settlement before most-favored-nation treatment will be granted. Czechoslovakian gold held by the United States will remain in the United States until a settlement is negotiated and submitted to Congress as part of any bilateral commercial agreement with Czechoslovakia. Both must be approved by both Houses of Congress before nondiscriminatory treatment and credits may be extended.

*Emigration to Join a Close Relative.*—The Act contains a provision refusing government credits, and MFN treatment to a nonmarket country which refuses to permit its citizens to emigrate to visit a close relative. The provision would not apply to Poland and Yugoslavia and would be subject to the waiver.

*Cooperation in locating MIA’s in Southeast Asia.*—Title IV of the Act includes a provision which directs the President to deny the extension of MFN treatment and government credits to nonmarket economies upon his determination that such countries have not undertaken to obtain the cooperation of the pertinent governments in Southeast Asia in locating U.S. personnel missing in action, in repatriating those who are alive, and in recovering the remains of those who are dead.

*East-West Foreign Trade Board.*—The Act directs the President to establish an East-West Foreign Trade Board within the Executive branch to monitor trade, credits and technology transfers between the United States and nonmarket economy countries.

The Board would review significant transactions involving (1) the transfer of U.S. Government credits, guarantees or insurance; (2) sizable trade contracts; and (3) transfers of sensitive technology, to determine whether such transactions are in the U.S. national interest. The Board would report on a quarterly basis to the Congress on East-West trade developments.





## TITLE V. GENERALIZED SYSTEM OF PREFERENCES

*General Authority.*—Title V of the Act authorizes the President to extend duty-free treatment to certain eligible products imported into the United States from beneficiary developing countries for a 10-year period. The essential features of the program are as follows:

- The President is authorized to extend duty free treatment to specified products imported from developing countries;
- The President designates beneficiary developing countries; 26 countries are expressly excluded;
- Eligible articles must be imported directly from the developing country; the value added in that country must be at least a minimum percentage (35%) of the value of the article, except in those cases where the country is a member of a free trade association in which case the local content from two or more associated countries must be 50%;
- Articles subject to import relief or national security relief actions are excluded;
- Articles imported from any one country are excluded if the imports of the article from that country exceed \$25 million or 50% of total U.S. imports of that article, with certain limited exceptions;
- The system will be reviewed in a report to Congress after five years and will expire after ten years.

In addition, the Act includes the following provisions:

1. *Beneficiary developing countries.*—The Act excludes countries within the following categories from eligibility to receive generalized preference under Title V of the bill:

a. All Communist countries, except those which receive MFN treatment, which are members of the GATT and the IMF, and which are not dominated by international communism.

b. Any country which is a member of OPEC or has entered into any other cartel-type arrangement, and acts to withhold supplies of vital materials or to charge a monopolistic price which creates serious disequilibrium in the world economy. Countries which are members of such cartels or OPEC and which act to withhold supplies or charge unreasonable prices may only qualify for preferential treatment in the U.S. market only if they entered into an agreement with the United States or an agreement to which the United States is a party, which assures U.S. access to essential articles at reasonable prices.

c. Any country which has expropriated the property of a U.S. national without provision for prompt, adequate, and effective compensation or without submitting the dispute to arbitration or carrying on good-faith negotiations.

d. Any country which has not taken adequate steps to cooperate with the United States to prevent narcotics and other controlled substances from unlawfully entering the United States.

e. Countries which do not eliminate reverse preferences by January 1, 1976, or do not take steps to assure that such preferences do not have a significant adverse effect on U.S. commerce by January 1, 1976.

f. Countries which do not recognize arbitral awards to U.S. citizens issued by arbitral bodies to which the parties have submitted their dispute.

In the case of items d., e. and f., the President may make an exception for particular countries when he deems it to be in the national economic interest and reports such determination to Congress.

2. *Insular possessions.*—The Act stipulates that insular possessions of the United States must receive treatment no less favorable than that accorded any other developing country with respect to any eligible product under Title V of the bill.

3. *Sensitive products.*—The Act specifies certain sensitive articles, which will be excluded from preference eligibility under Title V of the bill. The President may exclude additional products as he deems to be sensitive after receiving the Commission's report following the renegotiation procedures and Commission investigation provided for in Title I.

4. *Access to markets and commodity resources.*—The Act requires the President to take into account the extent to which a developing country is providing the United States equitable and reasonable access to its markets and basic commodity resources in determining whether to designate such country as eligible to receive preferences under Title V.

5. *Termination of preferential treatment.*—Under the Act, notification to the Congress of a Presidential decision to terminate preferential treatment for a developing country must be made 60 days prior to the time the determination takes effect. Furthermore, the Act requires that the country involved also be notified within 60 days prior to the effective date of the termination of its preferential treatment.

6. *Local content (value added) requirement.*—Under the Act, a developing country exporting a product to the United States must provide 35 percent of the value of the product upon importation into the United States in order to be eligible for duty-free treatment. Less developed countries which are members of a free trade area or customs union and designated by the President may be aggregated in applying the local content requirement under Title V. Such countries may also be aggregated for purposes of the competitive need formula. However, in any case where more than one developing country has contributed to the value of a product, a flat local content requirement of 50 percent is applied.

7. *Increases in gross national product.*—Under the Act, any product which is imported into the United States from any developing country in an amount equal to more than \$25 million in value in any one calendar year loses its eligibility for duty-free treatment under Title V.

The Act includes an escalator provision which provides for an annual percentage increase in the \$25 million figure equal to the percentage increase in the U.S. gross national product for the year preceding the year in question over the U.S. gross national product in 1974.

8. *Products not produced in the United States.*—Section 504 of the Act exempts any product from the 50-percent-of-total-imports ceiling in Title V where there is no directly competitive article produced in the United States as of the date of enactment of this Act. Thus, even if a product from a particular developing country represents more than 50 percent of total U.S. imports of that product in any one calendar year, it would still be eligible for duty-free treatment under Title V if there were no directly competitive article produced in the United States. Under certain other limited circumstances, the President may waive the 50 percent or \$25 million ceiling.



## TITLE VI. GENERAL PROVISIONS

Title VI of the Act contains general provisions covering definitions, relations to other laws, conforming changes in the tariff schedules and other matters.

Of particular significance are the following provisions of the Act:

*Services.*—The Act amends Title VI to make it explicit that whenever the term “commerce” is used throughout the Trade Act, it is to include by definition services associated with international trade. Furthermore, the term “trade” in Title I of the bill is defined to include trade in goods and services.

*Narcotics.*—Title V of the Act conditions the extension of preferential treatment to a developing country upon a requirement that it take adequate steps to prevent narcotics and other controlled substances from unlawfully entering the United States. Title VI of the Act requires the President to report to the Congress describing where dangerous drugs are being produced abroad, refined and shipped to the United States, and of the steps these specific countries have taken with respect to controlling the production and transportation of such products.

*Uniform Import Statistical Collection and Reporting.*—The Act directs appropriate agencies to collect and publish uniform statistics on imports, exports and production. In the past trade statistics and production data have been collected in such a manner as to make comparisons impossible. At the same time studies are to be conducted looking to the development of an international commodity code adaptable for modernized tariff nomenclature purposes and for recording, handling, and reporting of transactions in national and international trade.

*Trade Statistics.*—The Act requires the Executive Branch to submit monthly to the Senate Committee on Finance and House Committee on Ways and Means trade data which include in all import values the cost of insurance, port charges and freight and excludes from all export values soft currency sales and long-term foreign aid shipments.

*Voluntary Steel Restraint Agreement.*—The Act includes a provision which would immunize persons from prosecution under state and Federal antitrust laws by reason of their participation in the voluntary arrangement regarding steel imports to the United States which expires December 31, 1974.

*Limitation on Credits to the Soviet Union.*—Title VI also imposes a \$300 million ceiling on credits, insurance, and guarantees to the Soviet Union by any government agency (except the Commodity Credit Corporation). Such ceiling can only be exceeded by congressional approval in a manner consistent with the procedure contained in the Eximbank Act.